



DEPARTMENT OF LABOR

Employment and Training Administration

TA-W-72,673

WEATHER SHIELD MANUFACTURING, INC.
CORPORATE OFFICE
MEDFORD, WISCONSIN

Notice of Negative Determination
On Third Remand

On May 31, 2012, the United States Court of International Trade (USCIT) ordered the United States Department of Labor (Department) to conduct further investigation in Former Employees of Weather Shield Manufacturing, Inc. v. United States Secretary of Labor (Court No. 10-00299).

The group eligibility requirements for workers of a firm under Section 222(a) of the Trade Act of 1974, as amended (the Act), 19 U.S.C. § 2272(a), can be satisfied if the following criteria are met:

(1) a significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated; and

(2) (A) (i) the sales or production, or both, of such firm have decreased absolutely;

(ii) (I) imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(II) imports of articles like or directly competitive with articles—

(aa) into which one or more component parts produced by such firm are directly incorporated, or

(bb) which are produced directly using services supplied by such firm,
have increased; or

(III) imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased; and

(iii) the increase in imports described in clause (ii) contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

(B)(i)(I) there has been a shift by such workers' firm to a foreign country in the production of articles or the supply of services like or directly competitive with articles which are produced or services which are supplied by such firm; or

(II) such workers' firm has acquired from a foreign country articles or services that are like or directly competitive with articles which are produced or services which are supplied by such firm; and

(ii) the shift described in clause (i)(I) or the acquisition of articles or services described in clause (i)(II) contributed importantly to such workers' separation or threat of separation.

BACKGROUND

The initial investigation began on October 23, 2009 when three workers filed a petition for Trade Adjustment Assistance (TAA) on behalf of workers and former workers of the Weather Shield Manufacturing, Inc., Corporate Office, Medford, Wisconsin (subject facility). Workers at the subject facility (subject worker group) supply administrative support services related to the production of doors and windows at various domestic locations of Weather Shield Manufacturing, Inc. (hereafter referred to as "subject firm" or "Weather Shield").

29 CFR 90.2 states that "Increased imports means that imports have increased either absolutely or relative to domestic production compared to a representative base period. The representative base period shall be one year consisting of the four quarters immediately preceding the date which is the twelve month prior to the date of the petition." As such, the relevant time period for this investigation is October 2008 through September 2009, and the representative base period is October 2007 through September 2008 (hereafter referred to as "relevant time period" or "period under investigation").

The initial investigation revealed that neither the subject firm nor its customers increased import purchases of either doors or windows (or like or directly competitive articles) during the relevant time period. Additionally, the subject firm had not shifted abroad either the production of these articles or services like or directly competitive with those supplied by the worker group in the period under investigation. As such, the group eligibility requirements were not satisfied, and the Department issued a negative determination on July 16, 2010. The Department's Notice of Negative Determination was published in the Federal Register on August 2, 2010 (75 FR 45163). Updated Administrative Record (UAR) 611. The Department filed the UAR with the USCIT on October 31, 2011.

By application dated August 23, 2010, one of the petitioners requested administrative reconsideration of the Department's negative determination. In the application, the petitioner stated that the worker group covered by petition TA-W-72,673 was impacted by the same import competition as the worker group covered by TAA certification TA-W-64,725, which was issued on August 9, 2010 (Weather Shield Manufacturing, Inc., Corporate Office, Medford, Wisconsin; petition dated December 17, 2008) and argued that the same conclusion awarding worker adjustment assistance should be applied in the case at hand. However, because it was determined that a different relevant time period was at issue which resulted in a different conclusion, the Department determined that the determination in TA-W-64,725 was not controlling.

Because the Department determined that administrative reconsideration could not be granted, a Notice of Negative Determination Regarding Application for Reconsideration was issued on September 10, 2010, in accordance with 29 CFR 90.18(c). The Department's Notice of Negative Determination Regarding Application for Reconsideration was published in the Federal Register on September 21, 2010 (75 FR 57519). UAR 653.

Subsequently, the petitioners filed a complaint with the USCIT on October 8, 2010, and argued the same allegations as in their request for administrative reconsideration. The Department determined that further investigation under judicial review was

unjustified and filed an administrative record of the materials upon which the Department relied in making its determination with regards to the subject worker group's eligibility to apply for TAA.

In Plaintiffs' Motion to Supplement the Administrative Record, dated March 30, 2011, Plaintiffs indicated that the administrative record did not include documentation that adequately supported the negative determination and submitted additional information to be considered by the Department to show that Weather Shield faced import competition.

FIRST REMAND ACTIVITY

On May 2, 2011, the Department filed a Motion for Voluntary Remand in which it sought to supplement the administrative record with documentation that was used in the decision making process for case TA-W-64,725 and explain the relevance of this material. At that time, the Department did not seek to conduct further investigation. Rather, the Department amended the administrative record on June 3, 2011 to include documents from case TA-W-64,725 and supplemented the record with an explanation regarding the relevance of these documents.

The Plaintiffs filed a Memorandum of Points and Authorities in Support of Plaintiffs' Amended Motion for Judgment on the Agency Record on July 5, 2011 in which they asked the Department

to conduct further investigation and apply the same methodology for administering customer surveys and determining import competition as in the TA-W-64,725 remand investigation. Specifically, the Plaintiffs stated that the Department should collect additional information from the subject firm's customers and competitors.

SECOND REMAND ACTIVITY

On August 3, 2011, the Department requested a second voluntary remand to conduct further investigation, to permit the Plaintiffs to submit additional evidence, and to supplement the administrative record with all the contents of the TA-W-64,725 case record. During the second remand investigation, the Department collected additional information from the subject firm, conducted an expanded customer survey, collected aggregate U.S. import data, and sought input from the Plaintiffs.

The Department found that imports of Weather Shield's customers had declined during the relevant time period. The updated data also revealed that, contrary to information that had been provided previously, the subject firm's total sales for the relevant time period increased. As such, the Department determined that worker separations were not related to trade impact and reaffirmed the negative determination regarding TAA eligibility. On October 11, 2011 the Department issued a Negative Determination

on Remand. The Department's Notice of Negative Determination was published in the Federal Register on November 15, 2011 (76 FR 70761). Supplemental Updated Administrative Record (SUAR) 501-505.

THIRD REMAND ACTIVITY

On December 2, 2011, Plaintiffs filed a Memorandum of Points and Authorities in Support of Plaintiffs' Second Amended Motion for Judgment on the Agency Record. The Plaintiffs contended that the Department had not fully investigated the change in sales reported by Weather Shield; had not fully investigated if Weather Shield lost business to competitor Simpson Door Company, whose workers were eligible to apply for TAA under TA-W-65,585; and that the Department did not contact the domestic suppliers of a major customer of the subject firm to determine whether the suppliers sold imported articles to the customer, which could have created import competition for the subject firm.

On February 3, 2012, the Department filed Defendant's Response in Opposition to Plaintiffs' Second Amended Motion for Judgment on the Agency Record. In the response, the Department explained the basis of the negative determination. In particular, the Department reiterated that during the relevant time period, customer imports and U.S. aggregate imports declined, both in absolute and relative terms, and again emphasized that the sales of the subject firm increased during the relevant time period.

On February 22, 2012, Plaintiffs filed a Reply Brief in Support of Plaintiffs' Second Amended Motion for Judgment on the Agency Record in which they stated that the Department failed to investigate conflicting information provided by Weather Shield during the initial and first remand investigations of this petition regarding its overall sales of doors and windows in the relevant time period; pointed to possible import competition by alleged Weather Shield competitor, Simpson Door Company; stated that the Department failed to investigate if imports by Simpson could have impacted operations at the subject firm; and alleged that the Department did not investigate sufficiently whether a major customer of the subject firm had purchased imported doors and/or windows indirectly through its other domestic suppliers during the relevant time period.

On May 31, 2012, the USCIT filed a Memorandum and Order that stated that the Department's decision cannot be sustained as it does not explain the change in Weather Shield's reported sales information supplied by the subject firm. Additionally, the Memorandum stated that the investigation did not adequately address whether the customer purchased imported product from its other suppliers. The USCIT remanded the case to the Department to "review and reconsider its explanation for the differences in Weather Shield's sales for 2008; as well as its conclusions related to import volumes."

ACTIVITY RELATED TO WEATHER SHIELD'S 2008 SALES DATA

Pursuant to the May 31, 2012 Order, the Department again solicited information from Weather Shield regarding its sales for 2008 and 2009. In order to ensure the accuracy of the information collected from the subject firm throughout this investigation on which this determination is based, the Department requested and received an Affirmation of Information, signed under penalty of law, by the official representative of the subject firm. SUAR 170-173, 174-178.

Because the two sets of sales data provided by the subject firm during the earlier investigations were not identical, the Department requested that the subject firm provide an explanation regarding the discrepancy between the two sets of data along with the correct sales information. SUAR 2-26, 27-31. In order to determine if sales or production declined during the relevant time period, the Department also solicited information regarding Weather Shield's production data during the same time period. SUAR 35-39. The findings confirmed that, in terms of value, Weather Shield sales increased from 2008 to 2009. SUAR 32, 81.

In order for the Department to obtain from the subject firm production information regarding its total 2008 and 2009 doors and window units and to resolve any inconsistencies, on July 6, 2012,

the Department filed its first motion for an enlargement of time. The time extension was also requested at this time to allow for the collection and analysis of the customer's supplier responses. On July 9, 2012, the USCIT granted the Department's request for a time enlargement that extended the deadline for filing the results to August 15, 2012.

On July 19, 2012, the subject firm reported that production of doors and windows at the manufacturing locations which received the administrative support services of the subject worker group declined from 2008 to 2009. SUAR 40-45. The Department asked the subject firm to provide an explanation regarding the reason that a sales increase occurred while production declined. SUAR 40-45, 46-65, 66-71, 72-77, 78-80.

On August 6, 2012, the Department served Weather Shield with a subpoena to explain why the subject firm reported an increase in the value of sales of windows and doors for the same period (calendar year 2008 to calendar year 2009) that it reported a decrease in the production of these articles. SUAR 72-77.

Although Weather Shield reported that the sales information which was provided during the second remand was correct, SUAR 81, the Department sought further explanation of the seemingly inverse relationship between sales and production. The subject firm affirmed that total sales of doors and windows for 2008 and 2009 had increased. SUAR 32, 81. The subject firm also stated that the

production numbers submitted earlier were provided in error and that they had submitted updated and accurate information. SUAR 81.

On August 14, 2012, the Department filed a motion for a second enlargement of time of 60 days to continue the remand investigation. The Plaintiffs consented to the motion filed for the time enlargement provided that they receive any new relevant information provided by Weather Shield and to be given opportunity to comment.

In accordance with the August 22, 2012 Order, the Department submitted to the Plaintiffs information that consisted of email correspondence between the Department and the subject firm that took place between June 14, 2012 and August 8, 2012 and the subpoena served on August 6, 2012. SUAR 295-378.

On September 17, 2012, Plaintiffs provided comments on the released information, along with new import information. SUAR 382-386. The Plaintiffs stated that the information was insufficient for the following reasons: the record did not establish that all manufacturing locations and products manufactured by the subject firm were included in the sales and production figures; the Department had not demonstrated that the subject firm understood the questions posed and the type of information that had been requested, which had caused responses to be insufficient or incorrect; and that the subject firm had not provided accurate data regarding its imports of finished goods. SUAR 382-386.

The Plaintiffs also argued that it is unclear from the record how many of the subject firm's production facilities are covered under this investigation. SUAR 382-386. Specifically, the Plaintiffs point out that, during the second remand investigation, the Department found that, although the subject firm pointed to five production locations that were supported by the corporate headquarters during the initial investigation, the Department later received information that the corporate headquarters supported ten production facilities. UAR 17-22, 779-782. SUAR 174-178, 179-183, 184-186.

The Plaintiffs' comments regarding the five locations were derived from information that was submitted by the subject firm during the initial investigation of TA-W-64,735. UAR 17-22. That information was updated after the conclusion of the investigation of TA-W-64,735, and, during the second remand investigation of TA-W-72,673, the subject firm submitted a list of the ten production facilities that were supported by the subject worker group and fall within the scope of this investigation. UAR 779-782. SUAR 174-178, 179-183, 184-186.

As attested by the subject firm official and reflected in the record, the third remand investigation covered the locations supported by the subject worker group and all the products manufactured at those locations; the subject firm showed that it was fully aware of which locations and products it was providing

information; and that the subject firm confirmed that it did not import doors or windows (or like or directly competitive articles) during the period under investigation. UAR 779-782, 787, 789, 793-794, 796, 800, 820-821. SUAR 2-26, 27-31, 32-34, 35-39, 174-178, 179-183, 184-186.

The Plaintiffs asked the Department to obtain from the subject firm evidence that the information submitted to the Department during this investigation was accurate and complete. SUAR 382-386. In particular, the Plaintiffs suggested that hard copies or electronic screen shots of accounting records would be beneficial in supporting the findings. SUAR 382-386.

As noted earlier, the Department received from the subject firm's representative a signed Attestation. Therefore, the Department's reliance upon information supplied by the subject firm during the third remand investigation is reasonable. Nonetheless, the Department reviewed the record and determined that any inconsistencies that Plaintiffs raised were already resolved based on the record through the investigation by the Department and, consequently, that a review of the subject firm's financial records are not necessary.

Regarding the Plaintiff's claims of inaccuracy and inconsistency of the investigation, the Department identified information that is already part of the record to address the allegations and collected additional information from the subject

firm. UAR 779-782, 787, 789, 793-794, 796, 800, 820-821. SUAR 2-26, 27-31, 32-34, 35-39, 174-178, 179-183, 184-186.

To further support their argument regarding the inaccuracy of Weather Shield's import information, the Plaintiffs provided data from a trade publication. Specifically, the Plaintiffs submitted a bill of lading report from Zepol Corporation (www.zepol.com) that showed Weather Shield as an importer of doors and Windows. SUAR 386. Although the document did not list Weather Shield as the importer or consignee of foreign goods, it indicated that Weather Shield, specifically its Park Falls, Wisconsin facility, was the ultimate recipient of the imported products. SUAR 386.

The Department contacted the subject firm to obtain further information to address Plaintiff comments regarding the bill of lading. SUAR 83-98. Specifically, the Department again solicited information to confirm that the subject firm did not import doors and/or windows, or like or directly competitive articles, during the relevant time period. SUAR 83-98. The Department also requested that the subject firm provide information on its domestic vendors and to address the information submitted by the Plaintiffs from zepol.com. SUAR 83-98, 100-101, 102-104, 141, 142-143, 144-145, 146-147, 148-149.

The subject firm responded that the importer and consignee listed on the bill of lading document is a domestic vendor that supplies the subject firm with articles that are neither like nor

directly competitive with either windows or doors. SUAR 99, 105-140 150-152. The subject firm confirmed that it does not conduct business with any foreign firms, including the one listed on the bill of lading under the exporter column. SUAR 105-140, 150-152, 177-178.

The Department asked the subject firm to provide more detailed information on the relationship between the subject firm and the vendor listed on the bill of lading document, as well as provide information on any relationships with any other foreign firms during the relevant time period. SUAR 83-98, 99, 100-101, 102-104, 142-143, 144-145, 150-152. The subject firm stated that the vendor provided articles that are neither like nor directly competitive with either windows or doors, confirmed that Weather Shield does not purchase window or door units from vendors, and stated that the subject firm does not have information pertaining to the origin of the products purchased from vendors. SUAR 83-98, 99, 100-101, 102-104, 142-143, 144-145, 150-152. The subject firm explained that it does not purchase from vendors finished doors or windows and submitted a list of its top twenty vendors for 2008 and 2009. SUAR 105-140. The list included vendors that supplied services and articles other than doors and windows. SUAR 150-152.

In addition to the information collected from the subject firm regarding the new allegations, the Department conducted its own trade records search on zepol.com. SUAR 481-482, 485-488. The

search did not expose any import information relating to the subject firm for the relevant time period. SUAR 481-482, 485-488.

On October 2, 2012, the Department released more information to the Plaintiffs. The information included email correspondence between the Department and the subject firm that occurred between September 21, 2012 and October 1, 2012. SUAR 389-464.

On October 12, 2012, the Department filed a third motion for an enlargement of time. The motion stated that the Department required an extension to allow Plaintiffs to review and comment on the information provided by Weather Shield on October 2, 2012 (the second release of information to Plaintiffs), and, once comments are received, to analyze the comments, to collect further information as needed, and to file its remand findings. The USCIT granted the Department until December 17, 2012 to file the Department's third remand results and the supplemental updated administrative record.

On October 15, 2012, Plaintiffs submitted comments regarding the second information release. The comments provided by the Plaintiffs were erroneous on several counts. SUAR 467-469.

First, the Plaintiffs misunderstood the time periods for which information was collected and stated that the subject firm provided information for its vendors for 2007 and 2008. SUAR 467-469. The record evidence covers periods 2008 and 2009, which is the period under investigation.

Additionally, the Plaintiffs claimed that Weather Shield provided information regarding only one of its vendors. SUAR 467-469. This is inaccurate because Weather Shield had provided information regarding its top twenty vendors and confirmed that it does not purchase from vendors finished door or window products. SUAR 105-140, 150-152. Further, the Plaintiffs misunderstood the Department's intent when it questioned the subject firm regarding one vendor in more detail because the name of this vendor was found on the trade publication submitted by the Plaintiffs. SUAR 83-98. According to the information received from the subject firm, the vendor provided articles that are neither like nor directly competitive with either windows or doors to Weather Shield. Therefore, any such imports could not have contributed to a decline in employment and sales or production at the subject firm. Imports of articles other than doors or windows (or like or directly competitive articles) fall outside the scope of this investigation.

Additionally, the Plaintiffs stated that the Department should have solicited information from the subject firm regarding its imports of articles. SUAR 467-469. At the time the comments were submitted, Plaintiffs were informed that Weather Shield had confirmed that it did not import finished doors or windows (or like or directly competitive articles). This information was part of the October 2, 2011 information release. SUAR 389-464.

ACTIVITY RELATED TO WEATHER SHIELD'S CUSTOMER AND ITS SUPPLIERS

During the initial investigation of this petition, the Department conducted a customer survey on the customers of the subject firm to determine if the layoffs at Weather Shield were the result of increased import competition. UAR 562-565, 566-572, 573-575, 576-578, 579-581, 582, 679-738. A sample group of the subject firm's customers were surveyed regarding their purchases of doors and/or windows made in the relevant time period from the subject firm, other domestic firms, and foreign firms. The Department repeated a larger survey during the second remand that captured the majority of the subject firm's customer base during the period under investigation. UAR 1243-1319, 1325-1344. Both surveys demonstrated that customer imports declined during the relevant time period.

The results of the second remand investigation's customer survey showed that purchases made by the surveyed customers from the subject firm declined. UAR 1243-1319, 1325-1344. Purchases made by these customers from other domestic and foreign firms also declined. UAR 1243-1319, 1325-1344. Specifically, in the second survey conducted during the remand investigation, the Department captured 73 percent of the subject firm's customer base, in terms of value, in 2008 and 46 percent in 2009. UAR 1243-1319, 1325-

1344. During the surveyed period, customer imports declined 20 percent. UAR 1243-1319, 1325-1344. The survey conducted on Weather Shield's customers also showed that total customer imports declined 63 percent from 2008 to 2009. UAR 1325-1344.

At the time of this customer survey, the subject firm had submitted information to the Department that indicated a decline of total sales of doors and windows from 2008 to 2009. UAR 585, 673. However, it was revealed in the second remand that overall sales of the subject firm increased. UAR 815.

In the customer survey that was conducted during the initial investigation of this petition, one (and the largest) of Weather Shield's customers (for confidentiality purposes, this customer will hereafter be referred to as "the customer") was unable to provide a response to question #2 on the Business Confidential Customer Survey (OMB #1205-0342, Exp. 1/31/2013) which asks if the products purchased from other domestic firms were manufactured in a foreign country. UAR 562-565, 566-572.

The information that this significant customer provided on the survey showed that its purchases from the subject firm declined from 2008 to 2009. The customer's purchases from other domestic and foreign firms also declined during the same period. UAR 562-565, 566-572.

To determine whether the subject firm may have competed with imported doors and/or windows of the other domestic suppliers of

the customer, the Department followed up with the customer during the second remand to solicit information regarding the origin of the articles it purchases from other domestic firms. The customer again responded that it does not track import information on articles purchased from domestic suppliers and submitted a list of its suppliers for the relevant time period. UAR 823.

The customer was contacted again during this third remand investigation to confirm the information that it submitted during the initial and remand investigations of this petition. SUAR 188-239. The customer also submitted additional information regarding the size (purchase value) of its 2008 and 2009 domestic door and/or window suppliers along with more specific information about the products purchased from each supplier. SUAR 188-239.

Although the Department believes that its previous determination based on the findings of the customer survey was correct, the Department contacted each of the customer's suppliers to question whether they sold imported product to this customer in the period under investigation. SUAR 240-293.

In order to determine whether any imported product sold to the customer by its other domestic suppliers contributed importantly to a decline in operations at Weather Shield, the Department first had to determine the size of each supplier in relation to the customer's operations, and then examine any import impact on the operations of the subject firm.

The Department had to determine if the customer decreased its purchases from the subject firm and increased purchases from suppliers that imported the doors and/or windows they sold to the customer in the relevant time period. The customer provided information regarding the size, in purchase value, of its suppliers which was used to determine the significance of each supplier relative to the customer's operations and whether any of their imports could have impacted operations at Weather Shield. SUAR 187-239. The Department contacted all of the domestic suppliers of doors and windows of the customer to obtain information regarding the origin of the products sold to the customer in the years 2008 and 2009. SUAR 241-293. Each supplier was requested to specify how much, if any, of the doors and/or windows sold to the customer in the relevant time period was manufactured in a foreign country. SUAR 241-293.

A portion of the suppliers -approximately 24 percent of the customer's door and window supplier base in 2008 and 22 percent in 2009 - reported that the articles that they sold to the customer were manufactured in a foreign country. SUAR 241-293, 477, 480. However, because the suppliers imported a negligible percentage of the articles they sold to the customer, the customer purchased approximately one percent of imported products from its other domestic suppliers in 2008 and approximately two percent in 2009. SUAR 241-293, 477, 480, 507-508.

This new survey information was used to determine total import impact. To identify the relevance of the information collected from the suppliers of the customer during this remand investigation, the Department revised the survey analysis to show results to include the new import information. SUAR 507-508. Specifically, the results now include the missing response to question #2 on the customer survey form – imported purchases made from domestic firms. SUAR 507-508.

The updated information that includes indirect imports ("direct imports" refer to imports by the customers of Weather Shield and "indirect imports" refer to imports by the other domestic suppliers of Weather Shield's customers) shows that total imports of the customer's of the subject firm declined from 2008 to 2009 and that indirect imports increased by one percent during the relevant time period. SUAR 507-508. The negligible increase in imports by the suppliers could not have contributed importantly to a decline in employment and sales or production at the subject firm.

SUMMARY OF THIRD REMAND INVESTIGATION

The third remand investigation revealed that the subject firm's sales and production increased October 2008 through September 2009, and that the information provided by the subject firm could be relied upon by the Department.

Based on a careful review of previously submitted information and new information obtained during this remand investigation, the Department determines that increased imports of articles like or directly competitive with those produced by the subject firm did not contribute importantly to subject worker group separations. Therefore, the Department determined that the petitioning workers have not met the eligibility criteria of Section 222(a) of the Trade Act of 1974, as amended.

CONCLUSION

After careful reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of Weather Shield Manufacturing, Inc., Corporate Office, Medford, Wisconsin.

Signed in Washington, D.C., on this 13th day of December, 2012

/s/ Del Min Amy Chen

DEL MIN AMY CHEN
Certifying Officer, Office of
Trade Adjustment Assistance
4510-FN-P

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